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C O N F I D E N T I A L SECTION 01 OF 02 BANGKOK 002750

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SUBJECT: WHERE TO NOW IN THE WAKE OF COURT POLL DECISION?

REF: BANGKOK 2688 AND PREVIOUS

Classified By: AMBASSADOR RALPH BOYCE. REASON: 1.4 (D)

1. (C) Summary. Observers across the political spectrum are now speculating on when the Thai electorate will be called back to the voting booths. As noted in reftel, questions over the Election Commission's role and Caretaker Prime Minister Thaksin's candidature loom large. Politicians and other observers here are also looking at the potential impact of the scheduling of the new polls. If delayed long enough, the vote could even allow for some of Thaksin's party members to switch to the opposition. End summary.

COURTS STEP OUT AFTER KING CALLS FOR SOLUTION TO ELECTION IMPASSE

2. (C) As noted in reftel, on May 8 the Constitutional Court announced that the April 2 general elections were unconstitutional, the results null and that a new election must be held for the lower house of Parliament. This decision came in the wake of the King's April 25 speech in which he publicly criticized the conduct of the elections and instructed the courts to propose a solution to the issues surrounding them. The King's statements likely served as a significant motivator for the Court. In a salient part of his speech, the King said that "another point is whether it was right to dissolve the House and call for snap election within 30 days. There was no debate about this. If it is not right, it must be corrected. Should the election be nullified? You have the right to say what's appropriate or not. If it's not appropriate, it is not to say the government is not good. But as far as I am concerned, a one-party election is not normal. The one candidate situation is undemocratic."

QUESTIONS OF COURT JURISDICTION

3. (U) In giving its official verdict on last month's polls, the Constitutional Court drew its legal authority to try and adjudicate the case from Article 198 of the Constitution, which specifies that "In the case where the Ombudsman is of the opinion that the provisions of the law, rules, regulations or any act of any person under section 197(1) begs the question of the constitutionality, the Ombudsman shall submit the case and the opinion to the Constitutional Court or Administrative Court for decision in accordance with the procedure of the Constitutional Court or the law on the procedure of the Administrative Court, as the case may be. The Constitutional Court or Administrative Court, as the case may be, shall decide the case submitted by the Ombudsman without delay." The case against the polls was submitted to the Constitutional Court by the Ombudsman, which had received the petition from a group of university lecturers and the PollWatch Foundation (an election monitoring group) Chairman.

TRT LEADERS SEND MIXED SIGNALS ON VOTE TIMING

4. (U) In public statement after the Constitutional Court announced the nullification of the April 2 polls, Deputy Prime Minister Dr. Wissanu Krua-Ngam, stated that there is no time frame for the next election date because the current situation is unprecedented. Consequently, in Wissanu's view, the fixing of the next election date is not confined by the 60-day requirement for an election after Parliament's dissolution set by the Constitution. But House Speaker Dr. Bhokin and other TRT legal advisors told reporters that the 60-day requirement applies to the next election because the Royal Decree to organize the April 2 election remains valid, saying that the Constitutional Court only nullified the election -- but not the Royal Decree.

PUBLIC APPEARS TO ACCEPT THE COURT'S VERDICT

5. (U) The public reaction, save for some public expressions of joy by anti-Thaksin groups, has been low-key. There have been no significant protests by TRT supporters. Polls conducted by the Suan Dusit Rajabhat University and ABAC indicate a generally positive sentiment among the public on the ruling. In answer to a question on how they felt about the ruling, 48 percent replied "no strong feelings," 41 percent said "positive" and about 11 percent replied negatively. Asked whether the ruling would improve Thai politics, 47 percent said "Yes," 45 percent said "No change" and 6 percent indicated "things will get worse." On the fate

of the EC, 52 percent said that the members should resign and 48 percent said they should not.

16. (U) There remain petitions at the Constitutional Court, the Election Commission of Thailand, the Ombudsman, and the Administrative Court challenging the election. The ruling by the Constitutional Court makes it likely that most, but not all, of these petitions will be dropped. The Constitutional Court declined to consider in its recent ruling charges that small parties were bribed to run as opponents of the TRT, giving no reason. (Note: The EC Chairman said recently that the Commission is examining these charges; the Administrative Court, where these charges are also reportedly being examined, remains silent. End note.)

#### DEMOCRAT PARTY WELCOMES THE COURT DECISION

17. (C) Democrat Party (DP) Spokesman Ong-Ard Klampaiboon told us that the DP welcomed the Constitutional Court's decision to nullify the April 2 election and was ready to contest the new election. He foresaw two optional dates for the next election, with the first possibility being in early July with the candidate application taking place in the middle of June (after the King's accession to the throne celebration) and the alternative option being in August, with candidate application in July, depending on the choice of the government and the ECT. He noted that the DP favored having the poll in August, past the 90-day deadline (Under Section 107 of the Constitution, a candidate in an election must be a member of one particular political party for a period of not less than 90 days prior to registering to run) so as to allow defectors from the Thai Rak Thai to join the contest. Rival Thai Rak Thai politicians, said Ong-ard, naturally preferred the first option, because Article 107 would keep potential defectors within party ranks. DP Secretary-General Suthep Thaugsuban called for denying the incumbent ECT a role in organizing the next election and pressed for selection of a new ECT in its place by virtue of Article 138 of the Constitution.

18. (C) Prof. Prinya Thewanarumitkun, a law lecturer from Thammasat University, underlined what he saw as the need for a new royal decree for a new election. The Constitutional Court's decision on the annulment of the April 2 election, in his opinion, has nullified the original royal decree; thus, the Government needs to issue a new royal decree to have a new election. And since the new royal decree would be based on the dissolution of the House, a new election must be held within 60 days of the day of the issuing of new royal decree (Section 116). The question is when the Thaksin Government will issue this new decree. Prinya's impression is that the Government will issue the decree to allow a new election as soon as possible after the royal accession anniversary events in June.

19. (C) However, to make a new election more democratic, Prinya believes that the Government should seek to ease the Article 107-stipulated 90-day party membership rule by issuing a new royal decree for a new election that allows MPs to change parties before the vote. Prof. Prinya explained that in order to make the 90-day rule inapplicable, the Government can specify the new election date (90 days, give or take 2 or 3 days, from now or from when it deems appropriate) and wait for 30 days after that to issue a new royal decree for a new election to be held at the end of the 60-day period. In doing so, MPs or members of political parties planning to run in the new election can enter this contest under the banner of a new political party without breaking the 90-day rule. (Note: This could lead to some disgruntled TRT members defecting to the opposition, possibly reducing the government's position in Parliament. Most observers believe that TRT will contest the new elections relatively intact, however. End note.)

#### SOME TRT MEMBERS GETTING RESTLESS?

10. (C) Dr. Likhit Thirawekhin, currently a TRT Party List MP and ex-political science professor of Thammasat University, said on May 9 that, in his view, the Constitutional Court's ruling is clear and legitimate. Dr. Likhit opined that the new election decree must be enacted by the government in consultation with the Election Commission. The new election date should be set within 60 days of the announcement of the new election decree. In case the EC quits, the election process and date will be prolonged until the new EC is set up. Dr. Likhit also noted to us that he and some other TRT members are monitoring the situation and election schedule since they are considering leaving the party. He added that some TRT members are fed up with Thaksin's "no consultation style" of leadership.  
BOYCE